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4 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
5 **OF THE STATE OF WASHINGTON**

6
7 IN THE MATTER OF ENFORCEMENT)
ACTION AGAINST)

PDC CASE NO.: 02-280

8 JIM DOWNS, SR.)

FINAL ORDER IMPOSING FINE

9 Respondent.)
10 _____)

11 **INTRODUCTION**

12 The Washington State Public Disclosure Commission (Commission) conducted an
13 enforcement hearing under chapters 34.05 and 42.17 RCW and chapter 390-37 WAC on
14 April 9, 2002 with respect to the above-encaptioned matter. The Commission held the
15 hearing at the John A. Cherberg Building, Senate Hearing Room No. 2, in Olympia,
16 Washington. The Respondent appeared at the hearing, both personally and through his
17 attorney of record, Mary E. Mirante, Senior Assistant City Attorney for the City of SeaTac.
18 The Staff appeared both personally and through their attorney of record, Linda A. Dalton,
19 Senior Assistant Attorney General. The Commission held the hearing to determine whether
20 the Respondent violated RCW 42.17.130 by authorizing the use of facilities and equipment
21 of the City of SeaTac Fire Department for a campaign photo shoot in which Geoff Simpson
22 used City of SeaTac firefighting clothing and equipment, including a fire truck, and on-duty
23 employees of the City of SeaTac.
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1 During the hearing, the Staff presented, for the Commission's consideration, the
2 Report of Investigation dated December 26, 2001, the Notice of Administrative Charges
3 issued on February 6, 2002, and the parties' Stipulation to Facts and Jurisdiction and
4 Identification of Disputed Facts dated April 2, 2002.

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6 Specifically, the parties agreed that jurisdiction of this proceeding is based on
7 Chapter 42.17 RCW, the Public Disclosure Act, Chapter 34.05 RCW, the Administrative
8 Procedures Act, and Title 390, WAC. The parties' Stipulation is attached to this Order and
9 the factual assertions contained therein are incorporated herein by reference.

10 The Commission heard testimony from the Respondent, John Gallup, Fire Captain,
11 City of SeaTac, and Robert W. Meyer, Assistant Fire Chief, City of SeaTac and then
12 considered the closing arguments from counsel.

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14 Based on this record, the Commission finds that:

- 15 1) The parties stipulated as to facts and jurisdiction, and identified disputed facts.
- 16 2) The Respondent, Jim Downs, Sr., was fire chief for the City of SeaTac during 2000
17 when the Geoff Simpson campaign photo shoot occurred at the SeaTac Fire
18 Department.
- 19 3) While not originally scheduled to work, Mr. Gallup was acting battalion chief for
20 the City of SeaTac on July 21, 2000, the day of the campaign photo shoot.
- 21 4) Mr. Gallup stated that Keven Rojecki told him that he (Mr. Rojecki) had spoken
22 with Chief Downs about the use of City facilities for the photo shoot. Mr. Gallup
23 understood that the campaign photo shoot could occur as scheduled if the photos
24 did not specifically identify the City of SeaTac in any way.
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- 1 5) Mr. Gallup testified that it was a common practice for campaign photo shoots to be
2 conducted at SeaTac Fire Department facilities as they occur several times each
3 year, and that he did not see the activity as unusual.
- 4 6) Mr. Gallup testified that early on the morning of July 21, 2000, as acting battalion
5 chief, he went into the apparatus bay at the SeaTac Fire Department to check out the
6 equipment. Mr. Gallup stated that Chief Downs was at the station and that they had
7 a brief conversation about the day's activities. Mr. Gallup stated that he told Chief
8 Downs there would be a campaign photo shoot at the SeaTac fire department later
9 that day.
- 10 7) Chief Downs testified that he first learned of the Simpson campaign photo shoot
11 after receiving a copy of the complaint filed with the Public Disclosure
12 Commission.
- 13 8) Chief Downs acknowledged that he had had a conversation with Mr. Rojecki
14 concerning the prohibition of the use of City of SeaTac logos and insignias in
15 campaign literature, during which the Respondent offered to review Union activity
16 to determine if it compromised the City of SeaTac. However, Chief Downs denied
17 discussing a specific photo shoot.
- 18 9) Chief Downs further testified that he did not speak with Mr. Gallup at the SeaTac
19 Fire Department on the morning of July 21, 2000. He stated that he did not arrive at
20 the fire station until approximately 3:30 p.m., after participating in a golf
21 tournament. Chief Downs denied authorizing the Simpson campaign photo shoot.
- 22 10) Chief Downs stated that he conducted an internal investigation after the
23 Commission complaint was filed concerning the alleged campaign photo shoot.
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1 During that interview, Chief Downs admitted that he had directed Mr. Gallup to not
2 speak as to information that he (Mr. Gallup) may have had about the Simpson photo
3 shoot.

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5 11) Assistant Fire Chief Robert W. Meyer testified that he was present when Chief
6 Downs interviewed Mr. Gallup during the internal investigation. Mr. Meyer stated
7 that during the interview, Mr. Gallup said he had not had a conversation with Chief
8 Downs about the campaign photo shoot.

9 **ORDER**

10 Based on the record submitted in this matter, the Commission orders as follows:

- 11 1. That the Stipulation to Facts and Jurisdiction and Identification of Disputed Facts is
12 accepted;
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14 2. That the Respondent committed a single violation of RCW 42.17.130;
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16 3. That a total civil penalty of \$1,000.00 is assessed against the Respondent.
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18 4. That public funds may not be expended to pay the Respondent's civil penalty.

17 **RECONSIDERATION**

18 Any party may ask the Commission to reconsider this final order. Parties must
19 place their requests for reconsideration in writing, include the specific grounds or reasons
20 for the request, and deliver the request to the Public Disclosure Commission Office within
21 ten (10) days of the date that the Commission serves this order upon the party. Pursuant to
22 RCW 34.05.470(3), the Public Disclosure Commission is deemed to have denied the
23 petition for reconsideration if, within twenty (20) days from the date the petition is filed, the
24 Commission does not either dispose of the petition or serve the parties with written notice
25 specifying the date by which it will act on the petition. Pursuant to RCW 34.05.470(5), the
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1 Respondent is not required to ask the Public Disclosure Commission to reconsider the final
2 order before seeking judicial review by a superior court.

3 **APPEAL RIGHTS**

4 Pursuant to RCW 42.17.395(5), a final order issued by the Public Disclosure
5 Commission is subject to judicial review under the Administrative Procedures Act, chapter
6 34.05 RCW. Pursuant to RCW 34.05.542(2), a petition for judicial review must be filed
7 with the superior court in Thurston County or the petitioner's county of residence or
8 principal place of business. The petition for judicial review must be served on the Public
9 Disclosure Commission and any other parties within 30 days of the date that the Public
10 Disclosure Commission serves this final order on the parties.

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12 If reconsideration is properly sought, the petition for judicial review must be served
13 on the Public Disclosure Commission and any other parties within thirty (30) days after the
14 Commission acts on the petition for reconsideration. The Commission will seek to enforce
15 this final order in superior court under RCW 42.17.395-397, and recover legal costs and
16 attorney's fees, if the penalty remains unpaid and no petition for judicial review has been
17 filed under chapter 34.05 RCW. This action will be taken without further order by the
18 Commission.
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20 DATED THIS 25th day of April, 2002.

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22 FOR THE COMMISSION:

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25 VICKI RIPPIE, Executive Director
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